each payphone) even though it disagreed in principle with this determination because better market-based surrogates were available (most notably, 0+ commissions).

AT&T and the other petitioners, who were very much involved -- through the participation of their respective industries -- in helping the Commission reach its compromise results in the payphone proceeding, now refuse to recognize the public interest-based determinations the Commission correctly made, both in the initial Payphone Order and in the Second Report and Order on remand. AT&T, in particular, attacks use of the local coin rate as a market-based surrogate and seems to question use of any market-based surrogate. Instead, AT&T tries to hoist upon the Commission its views that cost-based compensation -- it has cleverly dropped the "incremental" label but kept the analysis -- is the only alternative.

The Commission should reject this economic sleight of hand by AT&T as inconsistent with the FCC's public-interest finding that such calls would not allow PSPs to recover all of their costs. Second Report and Order at para. 92. By making one-sided, self-interested arguments for a compensation rate that is economically unsound, AT&T ignores the careful compromise the Commission forged to make the payphone compensation system "fair" to all parties in the industry and to all callers. AT&T seems to have decided that it wants the whole pie for itself.

II. FURTHER REDUCTIONS TO THE MARKET-BASED COMPENSATION RATE ARE NOT CONSISTENT WITH THE FCC'S DUTY TO ENSURE "FAIR" COMPENSATION

If it is to continue to ensure "fair" compensation for PSPs in a manner that will promote the widespread deployment of payphones, the Commission should not make any further reductions to the market-based compensation rate it established in the Second Report and Order.

The Commission should, on the other hand, make the adjustments suggested by APCC and other PSPs, that would achieve a more accurate market-based rate. See, e.g. APCC Petition at 16-18.

A. $0.35, the prevailing local coin rate since deregulation, should remain the starting point for the Commission's analysis

AT&T argues that, in estimating the current market-based local coin rate for purposes of setting the initial dial-around rate, the Commission should have set the rate at $0.25 per call. According to AT&T, the Commission "gave no reason" for choosing the $0.35 per call rate in five of the seven deregulated states, as opposed to the $0.25 per call rate in the other two. AT&T at 16.[21] The Commission was not, however, required to ignore the rates charged by PSPs in Iowa, Michigan, Nebraska, North Dakota, and Wyoming merely because the market rate in those states is higher than in Montana and South Dakota. Second Report and Order, n. 33. It was entirely reasonable to conclude, instead, that evidence derived from five states was a more reliable indicator of the market rate than evidence derived from two states, especially since, the five deregulated states cited by the Commission include Michigan, which is a state with mixed demographics. The Commission's reliance on the majority sample, which was subsequently further confirmed by the initial post-October 7, 1997 developments, was entirely reasonable.[22]

APCC Petition at 9-18.

[21] AT&T also argues that the lower per call rate is supported by the $0.25 per call rate recently approved in Massachusetts. That rate, however, was a regulated rate approved by the public service commission, not a deregulated rate. Thus, it is not a marketplace benchmark.

[22] Only two months after federal deregulation of the local coin rate, at least four of the five Regional Bell Companies' payphone divisions have raised their rates, mostly to $0.35 per call. See, Wall Street Journal, "Pay-Phone Operators Ring In Deregulated Era Today", October 7, 1997.

B. The Commission should reject adjustments proposed by AT&T that would undercut market-based pricing for coinless calls

AT&T urges the Commission to make a number of downward adjustments in the market-based default compensation rate. In each case, the proposed adjustments are wrong -- both ill-advised and inconsistent with a proper analysis of the cost differences between local coin calls and coinless calls.

1. Costs vs. Profits

AT&T faults the Commission for subtracting from the local coin rate only the net difference in the costs attributable to local coin calls and dial-around calls, without also subtracting the alleged difference in the amount of profit that should be attributed to the two types of calls. AT&T at 17. In fact, the Commission did include profits in its analysis of the cost differential between local coin calls and dial-around calls. See Second Report and Order, para. 53, n. 139 (finding a differential of $12.46 per month, or 3.2 cents per call, in investment costs for coin vs. non-coin payphones, including depreciation and return on investment). Thus, contrary to AT&T's claim, the 6.6 cents is a "cost+profit" figure. There is no validity to AT&T's contention that the Commission's approach overallocated profit to dial-around calls.

2. Local Usage Costs

AT&T also claims that the Commission should have deducted from the local coin rate a larger cost differential, beyond the 2.5-3.0 cents per call amount deducted, to account for the costs of local coin "call completion" (i.e., local network usage) that are not attributable to dial-around calls. According to AT&T, these costs failed to take account of "fixed line fees" that are attributed, in part, to local coin calling. AT&T at 18-19. This argument is incoherent. The

Commission differentiated between the fixed portion of LEC charges, which must be incurred in order to connect a payphone for any purpose (coin or coinless calling) and the measured portion, which applies only to local coin calls. Second Report and Order, para. 54. Estimated per-call costs of the latter were attributed to local coin calls only and were deducted from the local coin rate. As for the fixed portion, to the extent that the Commission was "required to apportion fixed line costs between coin and non-coin calls," it did so, attributing fixed line costs equally on a per-call basis to local coin calls and dial-around calls.[23]

3. ANI Digit Costs

AT&T argues that the Commission's estimate of ANI digit costs (amounting to one cent per call) is incorrect. AT&T at 19-20. While APCC agrees that, based on the October 24 USTA letter, the total estimate of $600 million is inflated, correction of the error cannot change the compensation rate by more than a penny. Further, the Commission committed an offsetting error by dividing the total costs by the number of payphone calls rather than by the number of dial-around calls. Second Report and Order at para. 57. When this offsetting error is corrected, there may be no net change in the one cent per call estimate.

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[23] The Commission did not factor in the per-call costs incurred in areas subject to non-measured, or flat-rate service, where there is no separate per-call charge for local usage. Id. at n. 141. As a result, the cost differential for local coin calling may be overstated. Since actual network usage costs are typically about one cent per call at most (Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325, paras. 672-703 (Aug. 8, 1996), a flat rate is actually a closer approximation of actual local coin usage costs then is a measured-rate charge averaging 2.5-3.0 cents per call. When a PSP pays a flat rate for connection and local usage, none of the charges are avoidable by changing the number of local coin or dial-around calls, and therefore there is no differential in costs attributable to local coin and dial-around calls. By not factoring in flat-rate service, the Commission benefited the IXCs.

III. A "BOTTOM-UP" COST ANALYSIS IS UNNECESSARY AND INCONSISTENT WITH MARKET-BASED PRICING THAT REFLECTS VALUE TO THE CALLER

APCC and others have consistently demonstrated throughout this proceeding that a cost-based methodology for deriving dial-around compensation would not lead to "fair" compensation for "each and every completed intrastate and interstate call[,]" as envisioned by Congress, nor would it ensure the "widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. Section 276(b)(1). The Commission correctly based fair compensation for subscriber 800 calls and access code calls on the price a willing buyer and a willing seller find mutually agreeable to both. Payphone Order at para. 52. More recently, the Commission found that "no statement in the court's [IPTA] decision ... requires us to determine a rate based on cost data submitted by incumbent LECs, independent PSPs, and other parties to determine the new per-call rate." Second Report and Order at para. 23. Consistent with this conclusion, the Commission should once again dismiss arguments that, made under the guise of seeking a "bottom-up" cost analysis, favor an adoption of incremental cost pricing.[24]

If the Commission elects, however, to employ a cost-based study for any purpose in this proceeding, it must engage in proper economic analysis. AT&T's criticisms of the data the Commission relied on in the Second Report and Order reveal, quite convincingly, AT&T's intent to eviscerate any meaningful inquiry by the Commission into a PSPs actual costs. More

[24] AT&T argues that unless compensation for coinless calls is cost-based, such compensation will be used to "subsidize" pricing for local coin calls. AT&T Petition at 8. On the contrary, AT&T's fears and economic analysis are misplaced. Simple economics make it obvious that if coinless calls do not pull their own economic weight (i.e. priced below the level at which the market would value them), then PSPs would be forced to raise local coin rates to stay in business. The resulting market distortion would penalize all payphone callers. This same sort of distortion was one impetus to the enactment of Section 276, which mandates "fair" compensation for "each and every completed intrastate and interstate call." 47 U.S.C. Section 276(b) (emphasis added).

specifically, AT&T faults the Commission for relying on independent PSP data concerning costs and the average number of calls from a payphone,[25] and for allegedly excluding LEC data. In fact, the Commission extensively relied on data from IXC parties, especially AT&T. Second Report and Order at nn. 135, 137, 139, 155, 159, 271. As for LEC data, the Commission properly excluded the unreliable, flawed NYNEX and Sprint data for the reasons discussed below.

A. The leading independent PSPs are the most representative of the emerging payphone industry

The Commission's primary focus on the cost data of the independent payphone providers was entirely reasonable. Contrary to AT&T's claim that independent PSPs are "unrepresentative" of the payphone industry, the undisputed record shows that independent PSPs are broad-based in their provision of service and have repeatedly stepped in to provide service to unserved low-income and rural areas, while LECs have retreated from these areas as they have shrunk their payphone base. APCC Reply Comments at 22 See also Ex Parte Letter of APCC to FCC, September 9, 1996 (detailing the public service functions provided by independently owned payphones). Thus, there is no basis for finding that LECs are more representative or more efficient providers, or that a rate based on LEC cost data will promote widespread deployment of payphones. 47 U.S.C. Section 276 (b). Independent PSP data are preferable because it is precisely the independent PSPs who represent the best prospect of service to marginal payphone locations.

[25] The APCC study of call volumes was relied upon by numerous parties, including the IXCs and their allies. See, e.g., Second Report and Order at para. 45 and n. 124.

Although the concept of a "bellwether" provider in the context of payphone compensation, as originally proposed by the IXCs, is probably somewhat limited, it would seem to most readily fit the situation of the larger independent PSPs. APCC Reply Comments at 21-22. These larger independent PSPs, which have experienced impressive growth and which operate nationwide, are far more representative of the industry as a whole. As LECs have sought to shed their payphone operations,[26] the independent PSPs have worked to expand both the number of payphones available and the services offered. As such, it is the independent PSPs that are the growing, forward-looking companies of the industry's future.

B. If the Commission seeks to rely on a reliable cost analysis, it should refer to the one conducted by the Illinois Commerce Commission, which has long been on record in the instant proceeding

As stated above, APCC believes that engaging in a detailed "bottom-up" cost study, as suggested by AT&T, is unnecessary and would waste valuable Commission resources. The Commission does have the option, however, of relying on the detailed cost analysis of LEC and independent PSPs released by the Illinois Commerce Commission ("Illinois") in 1995, just one year before the Commission issued its first notice for proposed rulemaking in the instant proceeding.[27]

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[26] At least two of the BOCs, SBC and Ameritech, have sought to sell their payphone operations in recent years.

[27] See Independent Coin Payphone Association v. Illinois Bell Telephone Company, ICC Docket No. 88-0412, Order (rel. June 7, 1995); AAA Coin-Phone Systems, Inc. et al. v. American Telephone & Telegraph Company, et al., ICC Docket No. 92-0400, Order (rel. October 3, 1995). The Illinois orders were placed on the record by the Illinois Public Telephone Association ("IPTA"), which had participated in the study. IPTA's comments provide an overview of the Illinois proceeding. See IPTA 1996 Comments at 2-13.

The Illinois analysis is an indepth examination by a state public utility commission of the costs of both Tier 1 LEC PSPs and independent PSPs, making it a much more reliable and comprehensive study than those introduced into the record by the IXCs. Although Illinois analyzed only the PSPs doing business in its territory, Illinois is obviously a state with widely varying demographics -- ranging from urban Chicago to rural farmlands. Therefore, the Illinois data encompasses all types of population areas with corresponding differences in cost. Data within the Illinois proceeding pegs LEC PSP costs at $0.36 per call[28] and independent PSP costs at $0.37 to $0.55 per call. IPTA 1996 Comments at 9-11.

In its proceeding, Illinois found that the non-usage-sensitive, or fixed, direct costs for LEC payphone operations was approximately $0.25 on the average payphone call. To this amount, Illinois added an average per-call allocation of common expenses of $0.11, for a total cost of $0.36 per LEC payphone call. For independent PSP operations, Illinois had on the record before it data from three PSPs: one operating primarily in the Chicago metropolitan area, one operating in rural areas and in downstate urban areas, and one operating throughout the state. The non-usage-sensitive direct costs per call ranged between $0.25 and $0.32. Common overhead and common expense costs added average costs of between $0.11 and $0.23 per call. Therefore, the total cost per independent PSP call was $0.37 to $0.55. See generally IPTA 1996 Comments at 7-11.

As it has consistently maintained in this proceeding, APCC does not believe that compensation for dial-around calls should be based on the "cost" of the call for the same reasons

[28] In its comments, IPTA adjusted Illinois' $0.36 per call estimate to $0.42 per call to account for the length of an average call. IPTA 1996 Comments at 9. It did not make such adjustments to the independent PSP per-call estimate, because these costs "were figured on a per call average and these were not sensitive to the minutes of use per call." Id. at n. 10.

that the Commission itself has specified: a cost-based compensation "would not permit the PSP to recover a reasonable share of the joint and common costs associated with those calls." Payphone Order at para. 68. See also Second Report and Order at para. 92. The Illinois proceeding, however, provides more reasonable cost-based analysis that is far more reliable and useful than the incremental cost data , much of it obtained second hand, relied upon by AT&T and others.

C. The data AT&T submits is unreliable and out-of-context

AT&T argues that the Commission should rely on the "cost" data from a New England Telephone study that was submitted to the Massachusetts DPU. The Commission previously rejected arguments by the IXCs on behalf of this study and properly discounted its unreliable data. AT&T's renewed attempts to muddy the waters with this dubious "cost" data should be rejected.

As recounted by APCC in its reply comments, the hastily compiled New England Telephone study was prepared by NYNEX in March 1997, in connection with a pending request for a temporary increase in the local coin rate, pending the full deregulation of that rate as of October 7, 1997.[29] APCC Reply Comments at 17-22. APCC pointed out in its reply comments that, even in the best of circumstances, LEC cost studies are of limited value, given the numerous uncertainties inherent in the allocation of costs. NYNEX does not appear to have devoted a great deal of care to the preparation of the Massachusetts study. The study also was not carefully scrutinized by the DPU, as indicated in statements in DPU's subsequent opinion:

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[29] At that time, the local coin rate in Massachusetts had been frozen for years at 10 cents per call, while most jurisdictions were allowing rates of at least 25 cents per call.

> To determine whether NYNEX's cost analysis is accurate, the Department would need to conduct a full investigation.... It would be an imprudent use of regulatory resources ... to conduct a resource-intensive investigation of NYNEX's payphone cost study, the results of which would be short-lived given the October 7, 1997 deregulation date.[30]

Contrary to AT&T's arguments, NYNEX had every reason to keep its reported payphone costs to the absolute minimum. Although it was proposing a local rate increase, NYNEX was being pressured by the DPU to reduce the level of its access charges that IXCs, including AT&T, pay for use of NYNEX's network.[31] NYNEX certainly knew that the higher level of payphone costs shown in support of a temporary local coin rate increase, the larger would be the permanent reduction in access charges -- benefiting the IXCs -- that would be required as a result. Under these circumstances, it had a undeniable incentive to "low-ball" its payphone costs.

In addition, there is no indication in the NYNEX study that it involved the imputation of tariffed charges or fully distributed costing, as required by the FCC's accounting rules, as opposed to being an incremental cost study. An incremental cost analysis is generally sufficient to justify a requested increase at the state level, but not sufficient to satisfy the imputation analysis required under the Commission's nonstructural safeguards. Thus, the Commission properly rejected such an approach in this proceeding, both for compensation purposes and subsidy prevention problems. AT&T also argues that the Commission should consider anew data submitted by Sprint. The Commission had given this data limited weight because it was not representative of the cost structures of independent payphone providers. Second Report and

[30] Investigation by the Depart of Public Utilities on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.P.U. Nos. 10 and 15, filed with the Department on December 31, 1996, to become effective January 30, 1997 [Public Access Smartline Service], and M.D.P.U. No. 10 filed January 24, 1997, to become effective on February 23, 1997 [elimination of the coin rate for local calls] by New England Telephone and Telegraph Company d/b/a NYNEX, D.P.U. 97-18, Order (April 14, 1997) at 10-11.

[31] NYNEX was similarly required to reduce its regulated rates for payphone services to reflect the removal of subsidies from these services.

Order at n. 267. AT&T claims that Sprint is more representative of the PSP industry, because most payphones are provided by LECs. AT&T at 14. As APCC demonstrates above, a better case can be made that the independent PSPs are the where the growth and innovation of the payphone industry will take place in the immediate future. While it submitted a "study" on some of its costs, Sprint itself seems unconvinced about its own numbers. It's arguments about the direction the Commission should follow rely more on the dubious NYNEX submission than on its own analysis. Sprint Comments at 8-11. There is no need for the Commission to re-examine the Sprint data, which it properly discounted in its initial examination. The Commission should, however, specify the many reasons it found the Sprint submission lacking before tossing it aside.

In a final attempt to save the NYNEX and Sprint studies from their rightful rejection, AT&T states that it "has just recently obtained unrestricted access to an in-depth analysis by Southwestern Bell Company ("SBC") of the cost incurred in operating its payphones." AT&T at 15.[32] AT&T argues that the SBC data shows that SBC's total cost for a coin call at $0.195 or $0.162 per call, depending on whether the cost of commissions is included. AT&T at 15. AT&T then argues that because SBC's "costs" are lower than Sprint's costs and similar to the NYNEX data, the Commission did not have a basis for its decision to discount the Sprint and NYNEX data. Id. This line of argument is simply illogical. Two studies of questionable value cannot be made to work through the last-minute introduction of a third study that, as demonstrated below, is equally unreliable.

[32] According to AT&T's affiant, David C. Robinson, SBC was apparently considering the sale of its payphone business when it prepared the cost study in 1994. Mr. Robinson states that AT&T received it from a potential buyer, subject to a non-disclosure agreement that expired on October 3, 1997. Robinson Aff. at 1-2.

The Commission should view the SBC data with skepticism. The data attributed to SBC suffers from the same fatal flaw as the NYNEX data: it was prepared for a purpose where the LEC had every reason to minimize and distort its true costs. It is fairly obvious that a LEC preparing data for a potential buyer of its payphone business would have every incentive to play down its true costs of providing service and to portray an environment where profits would be at their maximum. This is certainly the case with the latest numbers submitted by AT&T in this proceeding's latest round.

In addition, one must also question the legitimacy of the SBC "data" submitted by AT&T, which is not complete. There are numerous pages of data that have not been provided to the FCC. For example, the financial information, beginning with the income statement, begins at page 19 of an original document that appears to be 88 pages in length. AT&T has submitted only 16 pages of these 88 pages.

The SBC data are also out of date and do not reflect a competitive payphone marketplace. Even if the assumptions were reasonable for its stated purpose in 1994, there is no assurance that those assumptions continue to be reasonable in today's payphone environment, particularly in light of the termination in the 1996 Act of all LEC subsidies for their payphone operations.[33] For example, the book depreciation rate in the SBC data is shown to be 5.0% a year, equating to a relatively long depreciable life of 20 years. This is inconsistent both with what the RBOCs are using today to depreciate their payphone assets, and with the rate the Commission deemed

[33] Prior to the enactment of Section 276 of the Communications Act, an LEC could calculate any return it wanted for its payphone operations, because the difference could be credited or debited to other monopoly operations. Section 276 required LECs to terminate such subsidies to its payphone operations as a step toward leveling the competitive playing field for all PSPs, whether independent or LEC. 47 U.S.C. Section 276.

reasonable in its Second Report and Order. This depreciation term is also inconsistent with the ten-year term that AT&T's Mr. Robinson used earlier in estimating the "cost" of a coinless call. Robinson Aff. of August 26, 1997 at 5. While Mr. Robinson altered at least one assumption used in the SBC study, he failed to adjust this assumption. Therefore, the effect of using a 20-year life as opposed to a 10-year life is to understate the associated depreciation expense by a factor of two.

Use of the SBC data has other problems as well. AT&T's depreciation expense in the SBC data is not only understated due to the use of a 20-year life instead of a 10-year life, but is also understated due to its reliance on the embedded base of equipment held by SBC, which could be up to 20 years old. The gross investment per payphone as projected by SBC in 1997 -- the year used by Mr. Robinson for his analysis -- was $1,052. This figure is $493 per payphone less than the estimate of Mr. Robinson of $1,545, shown in his earlier affidavit. Again, instead of adjusting the SBC data to be more representative, Mr. Robinson merely relied upon the data submitted in the SBC data. The effect of this flaw is again to understate the depreciation expenses. In addition, property taxes are also understated because they are based upon the gross investment in property plant and equipment -- the $1,052 investment per payphone.[34]

Finally, the data compiled by AT&T's Mr. Robinson omitted categories of legitimate costs that should be included. For example, the analysis does not include a return on the equity component of the capital structure. While the analysis does provide for debt interest expense, contrary to Mr. Robinson's earlier affidavit, the analysis in the more recent affidavit does not include a return on equity. Such a return is a legitimate cost of doing business that should be

[34] The SBC data calculates property taxes by multiplying the property tax rate of 34% times the gross investment in property plant and equipment.

included. In addition, the analysis fails to include the interest expense associated with delayed receipt of per-call compensation and the costs associated with ANI ii development by the LECs.

The SBC data is riddled with assumptions that are not reasonable and are inconsistent with current LEC practice, as even AT&T has recognized. For this reason, the additional "data" must be rejected by the Commission.

As it previously concluded, the Commission should not rely on the deficient NYNEX and Sprint studies in any manner. Saying the same thing a third time does not make it any more reliable. Therefore, the arrival of more of the same questionable data, from an SBC sales presentation, should not change the Commission's bottom line rejection of these data, including the SBC "study."

D. Arguments that the Commission should adopt a compensation rate based on an incremental cost basis are unconvincing and were previously rejected

The Commission should similarly reject the CBC's arguments that the Commission should apply incremental cost standards and TELRIC pricing to dial-around compensation because the payphone market, like local exchange, is not competitive. CBC at 23-24.[35] The Commission properly rejected both incremental cost standards and TELRIC pricing in 1996 and

[35] CBC 's arguments appears to be based on the Commission's statements at the outset of the 1996 Payphone Order that the payphone marketplace will become competitive over time. CBC at 18. Such a conclusion, amply supported by the record in the proceeding, was within the Commission's expertise to make. It is not necessary for the Commission to independently "present" data showing "widespread competition at present" to adopt market-based compensation rates. CBC also argues that the Commission provided no support for its view that the payphone marketplace has low entry and exit barriers, "which will permit the payphone market to become competitive over time." CBC at 20. On the contrary, the Commission discussed at length and took steps to remove barriers to entry and exit in its initial orders. See, e.g., Payphone Order at paras. 2-5 and Reconsideration Order at paras. 139-141. Indeed, much of the Commission's efforts in the instant proceeding have been directed toward removing barriers to entry and exit in the payphone marketplace.

again in the Second Report and Order. See Payphone Order at paras. 68-69 (such a standard not fairly compensatory because it would not permit recovery of a reasonable share of PSP joint and common costs); Second Report and Order at para. 92. For CBC to suggest that a marketplace of over two million payphones maintained by countless providers across every community in the nation is analogous to the local exchange, which is perhaps the only remaining monopoly in the communications industry, defies both the Commission's findings and common sense.[36]

IV. THE OTHER OBJECTIONS OF AT&T, 800 SUBSCRIBERS, AND PAGING SERVICE PROVIDERS ARE EITHER INVALID OR ARE EASILY ADDRESSED

As discussed with greater specificity below, a number of the petitioners raise arguments at this juncture that are effectively moot. The appellate court's remand of the Commission's orders in CC Docket No. 96-128 was a limited remand that allows the Commission to correct the identified problems while keeping the general payphone compensation framework intact. Some of the petitioners indicate that they have just focused on the fact that they will have to pay per-call compensation[37] and, as a result, make claims of "unfair windfalls" for PSPs and a "severe

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[36] PageNet argues that subscriber 800 calls warrant a lesser compensation rate because they generate less revenue than other calls, namely access code calls. PageNet at 10. Analysis about the revenues generated by particular types of payphone calls is not relevant at this juncture in the proceeding. How much revenue a particular toll call generates is essentially the result of a marketing decision made by the carrier-provider about the price under which the service will be available to the end user. As such, the revenue generated by each subscriber 800 call is not a factor in either a market-based or cost-based analysis. For the Commission to entertain any revenue analysis for any type of payphone call, it would need to revisit its findings about all types of calls. If this were the case, APCC believes that it could make a convincing case that the average revenue on various types of calls would entitle it to some substantially higher per-call compensation rates. Instead of engaging in such a time-consuming endeavor, however, the Commission chose an average default rate for all payphone calls. The use of rate averaging is a traditional, time-honored ratemaking concept.

[37] See, e.g., AADS at 1 ("only recently became aware of this proceeding").

impact" on businesses. CBC at 1. As a result, because they chose not to participate in what was one of the Commission's leading proceedings during the 1996 calendar year, they urge the Commission to undo what has already been decided and upheld by the appellate court. The Commission should reject all arguments with this premise and focus instead on ensuring fair compensation for all payphone calls will lead to the widespread deployment of payphones for the benefit of the general public.

In a similar vein, some petitioners propose possible approaches to payphone compensation that are somewhat outside the scope of the Commission's responsibilities on remand. To determine whether or not these are actually viable approaches that would benefit the public interest, the Commission would need to conduct an inquiry or inquiries that could continue on indefinitely. Perhaps some of the petitioners intend that result. In any event, the Commission and the industry must always be open to ways of improving the way it does business and the manner in which they serve the public. This openness, however, must not result in delaying the fruition of the increasingly competitive payphone marketplace that Congress and the Commission both envisioned. Therefore, in the very few instances when one of the petitioners' last-minute arguments results in a proposal that would advance the public interest, the Commission may, in its discretion, choose to examine such an issue further in a future proceeding, but only after it acts immediately to resolve the more pressing compensation issues currently remanded to it.

Carrier-Pays v. Caller-Pays. As a part of its full-blown assault on all aspects of the Commission's payphone compensation system, the paging industry attempts to reargue the "carrier-pays" method of compensation, even though its challenge was rejected by the Court of

Appeals. The paging industry proposes this time that the Commission adopt a "modified caller-pays" system, whereby the Commission would add a new 8XX code for callers willing to pay for calls to blocked numbers. See, e.g., AOS at 2; AADS at 5-6; PageMart at 8; Source One at 8. This variation on the original caller-pays proposal, presented as an "option" to callers, is virtually no different than the caller-pays approach explicitly rejected by the Commission. Reconsideration Order at para. 88. In addition, no party states that this proposed alternative is currently available, and there is every reason to believe that such availability will not come quickly. For example, the "8XX' alternative could not be accessed from many LEC payphones, because the call-rating functions necessary to tell the caller what coins to put into the payphones are not available on "dumb" payphones (with the intelligence in the central office), which are still widely used by the LECs. In addition, the "modified" caller-pays approach would likely cause significant confusion among callers about "what to do" at a payphone. Thus, the cosmetic "8XX" variations on the original caller-pays proposal will not save it from the same disposition as its predecessor.

At each juncture before the Commission and the Court, the paging industry has argued at length for the establishment of a "caller-pays" compensation system, and most of its arguments -- whether about the potential for fraud or the status of blocking capabilities -- are geared toward that objective. The Commission concluded in both the Payphone Order and the Reconsideration Order that the "carrier-pays" system was in the public interest, because coin deposits would impose a significant inconvenience on callers, and that carriers and their subscribers are the primary economic beneficiaries of subscriber 800 calls. See, e.g., Reconsideration Order at paras. 88-89. The Court of Appeals, while remanding some issues to the Commission, upheld this conclusion. IPTA at 21. Further, it is clear that Congressional policy does not favor requiring coin deposits on dial-around calls. See 47 U.S.C. Section 226(e)(2). Notwithstanding the paging industry's protests, the "caller-pays" system was not an issue that the Commission was required to address on remand. See Second Report and Order at para. 123 ("caller-pays" issue was raised by parties despite limited scope of remand NPRM). The Commission stated that, "[t]o the extent that we decide to revisit any of these issues, such review will be addressed in a subsequent proceeding." Id. The paging industry has had more than enough bites at the apple, and the Commission need not further address these "caller pays" issues at this juncture.

Per-Call Blocking. The paging industry and other 800 subscribers also renews its arguments that blocking is "not generally available," particularly in light of the Common Carrier Bureau's grant of a waiver, which delays until March 1998 the availability of coding digits, which petitioners argue are necessary to have the ability to block calls from payphones.[38] See, e.g., CBC at 12; DMA at 5; Mtel at 2-5; Source One at 3-4. Even under this waiver, however, blocking is in place for 60% of payphones.[39] As APCC has previously pointed out, however, these ANI screening digits are not necessary to block calls that the paging service providers believe are charging "too much." APCC Reply Comments at 30-31. The information needed for blocking, such as the line number of the payphone, will reside in the IXC's database, so that whenever a payphone with an unwanted price originates calls to a particular IXC's network,

[38] DMA contends that blocking leads to lost opportunities and generally defeats callers expectations. DMA at 5. APCC believes that DMA's rationale will ultimately encourage large numbers of 800 subscribers to negotiate a fair, market-based rate for coinless calls with PSPs. In short, the marketplace will address DMA's concern, which is consistent with the Commission's deregulatory, market-based approach in this area.

[39] For the remaining payphones, blocking is not in place only because IXCs and LECs have failed to coordinate their efforts, and have instead chose to wage a legal battle over interpretation of the ANI digit requirement of the Payphone Order.

those calls will be blocked. Further, even if the requisite database for blocking purposes has not yet been created, there is no necessity to generate it until such time as per-call compensation is tied to individual PSP's prices. This will not happen until the second year of per-call compensation beginning October 1998. As a result, IXCs have an additional year to deploy any database deemed necessary.[40]

Potential for Fraud. Both the paging industry and the 800 subscribers make reference to the potential for fraud in the existing per-call compensation system, although the evidence of actual fraud in the three months that the system has been in place is scant. It is nonetheless an unfortunate reality that the potential for fraud exists with any communications system, not just dial-around calls. The parties best able to detect and put a stop to fraud in this instance are the IXCs whose networks are being accessed. As with any case in any area, when any party has evidence of fraud, it should refer it to the appropriate authorities for prosecution. See Payphone Order at para. 65. In no case, however, should the specter of potential fraud be used to undercut the fair compensation that is necessary to ensure the "widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. Section 276(b)(1).

Per-Increment Pricing. The paging industry claims that the potential for fraud is exacerbated by the failure of the Commission to order PSPs to credit 800 subscribers for wrong-number calls originated by payphones, which would allow the subscriber to avoid paying payphone per-call compensation. AADS at 4. APCC believes that receiving wrong-number calls is a necessary nuisance that every person who relies on a telecommunications service ultimately experiences. Over time, the receipt of wrong-number calls balances out -- everybody

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[40] The Commission has never found that blocking technology necessarily will be deployed. It is enough that such technology can be deployed if necessary. See id.

gets a few. To the extent that 800 subscribers seek credit for the occasional wrong number from PSPs, APCC agrees that the PSP should make such an adjustment -- but only if the long distance company carrying the call has also provided a credit for that particular call to the caller on its monthly bill. More generally, once a caller or 800 subscriber has evidence of any fraud or a significant number of wrong-number calls, along with a corresponding credit from the long distance company for the calls in question, APCC is committed to working out a credit system for those particular calls.

The paging industry and other 800 subscribers argue that while Section 276 of the Act mandated that PSPs be compensated on a "per-call" basis, there is no requirement that each call be compensated at a rate that is always equal to the local coin rate. See, e.g., DMA at 1; Mtel at 7; Page Net at 10-11. Under this rationale, they propose alternatives that range from the unworkable to those barred by the statute.

First, PageNet proposes that subscriber 800 calls be priced per increment, such as a charge for each tenth of a minute. PageNet at 12-16. But, not content to try to obtain a special discount for itself, PageNet also argues that calls exceeding ten minutes should be capped, with no compensation being paid after the tenth minute. Id. at 16-17. In effect, PageNet wants to pay less than the market-based rate because it claims its calls are too short to be counted as full calls. Yet, whenever its "short" calls exceed ten minutes, it wants another discount.

Second, AADS proposes, as an alternative to per-increment pricing, all calls under 15 seconds in duration should not be compensated. AADS at 4.[41] AADS reasons that this special

[41] AADS seeks an exclusion from compensation for all less than 15 seconds. Id. PageNet, on the other hand, contends that the average holding time for the "tens of millions of messages that it completes for customers each month" is under 30 seconds. PageNet at 13. Such (Footnote continued)

exemption for itself and all other 800 subscribers would free a large majority of its calls to be free from having to pay compensation.

APCC's answers to these proposals is simple and straightforward. First, both the statute and the Commission's rules require "each and every completed intrastate and interstate call" to be fairly compensated. 47 U.S.C. Section 276. Calls that are thought to be "too long" or "too short" are not to be treated any differently -- certainly all are required to be compensated. As recognized by one paging dispatch service, a caller expects to pay the going rate whenever she makes a call, regardless of the length:

> Most of us who have occasion to use pay phones on a local level ... would perhaps spend 60 to 90-seconds on a call. Quite noticeably, the pay phone does not give change for a shorter conversation!

AOS at 3 (emphasis added, exclamation mark in the original). On some days, payphone calls will be longer, and on other days they will be shorter. Over time, the duration of the calls average out for everyone: the caller, the 800 subscriber, and the PSP. Compensation for each and every call is not only a matter of law, it is a matter of common sense.

Second, proposals that the Commission consider per-increment pricing are not new. The Commission's 1991 discussion in a notice of proposed rulemaking about such pricing, Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Report and Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 4736, 4747 (1991), which it ultimately rejected as unworkable in its subsequent order, Second Report

(Footnote continued)
a wide disparity in the average length of a paging service call illustrates perfectly the need for the Commission to defer consideration of these issues, if they warrant any consideration at all, to a separate proceeding where the differences in record data and contentions could be developed and addressed at length. The Commission is under no obligation to entertain these anecdotal arguments in this proceeding.

and Order, 7 FCC Rcd 3251, 3252 (1992), concerned compensation for some dial-around calls on a per-minute basis, not the per-tenth-of-minute pricing advocated by the paging industry and 800 subscribers. Given the several years that it took the industry to move to a per-call compensation system, which was ultimately mandated by statute, there is no reason to believe that a compensation system that is based on a handful of seconds of usage would be technically and administratively possible to achieve in the near future, especially when the Commission has previously discarded the notion of per-minute compensation. Should such a per-increment compensation system be practicable in the future without jeopardizing the compensation flows to which PSPs have long been entitled, the Commission will have the discretion to open a new proceeding to explore such possibilities.

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CERTIFICATE OF SERVICE

I hereby certify that on January 7, 1998, I caused a copy of the foregoing American Public Communications Council's Opposition To Petitions For Reconsideration to be sent by first class mail, postage pre-paid, or by hand delivery (*), to the following:

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